

**NON-MOLESTATION AND  
OCCUPATION ORDERS  
CLIENT GUIDE**

## **Non-molestation and Occupation Orders**

This document provides general guidance regarding injunctions to protect from domestic abuse available in the family courts. Your family lawyer will be able to provide specific advice based on your circumstances.

### **Family homes and domestic violence**

If you are suffering from violence, threats or intimidation, it is possible to apply in the family courts for an injunction to help protect you. There are two types of injunction:

- non-molestation order
- occupation order

### **What is a non-molestation order?**

A non-molestation order prohibits your partner or spouse from using or threatening violence against you or your children, or intimidating, harassing or pestering you. It can contain very specific provisions depending on the particular type of harassment happening to you.

### **Who can apply?**

To apply for a non-molestation order you must be an associated person, which is defined in the applicable legislation. Former and current spouses, civil partners and cohabitants are included, as well as fiancé(e)s, relatives, people living in the same household, the parents of children in the house and those who have been in intimate personal relationships of significant duration. Your family lawyer will be able to advise you whether you can apply.

### **What is the procedure?**

The person applying to court for the injunction must complete a form and a witness statement setting out in detail what has taken place. Although usually the other person is told if a court application is made against them, this won't be necessary if your safety or the safety of any children is at risk. The person asking the court to help is the applicant and the other person is the respondent. Usually, the respondent will prepare a witness statement in response to yours.

## **How does the court decide?**

In deciding whether to make an order, the court considers the health (mental and physical), safety and well-being of the applicant or any relevant child. It must be satisfied that there is evidence of molestation and that the applicant or children need protection from the court. Molestation involves any form of physical, sexual or psychological molestation or harassment that has a serious impact on the health and well-being of the applicant or any relevant child. Molestation is not only defined as violent behaviour, it may be other forms of behaviour.

Any non-molestation order the court makes will contain a list of things that the respondent is prohibited from doing. The order can last either for a specified period of time or indefinitely. Breach of a non-molestation order is a criminal offence and the police can arrest someone who is disobeying an order.

## **What is an occupation order?**

An occupation order sets out who can live in the family home (or certain parts of it) and can also restrict someone from entering the area surrounding a home. An occupation order does not affect each person's financial interest in the home, simply who can live in it.

## **Who can apply?**

Former or current spouses, civil partners or cohabitants, or people with a legal entitlement to occupy the property, such as an owner or tenant, can make an application to court for an occupation order. The person asking the court to help is called the applicant and the other person is the respondent.

## **What is the procedure?**

The applicant must complete a court form and provide a witness statement setting out in detail the reasons why they are seeking the order. Usually, the papers will be sent to the respondent, who has a chance to reply by preparing his or her own witness statement. The court will list a date and time for a hearing to decide what should happen.

## **How does the court decide?**

The court applies different tests depending on the relationship status of the people involved and whether the applicant has any legal right to occupy the home. For certain categories of applicant, the court will apply a 'balance of harm' test, in which it balances whether any person or child is likely to suffer significant harm if an order is or is not made. In other cases the court must exercise its discretion taking into account all the circumstances. The process is quite complex and your family lawyer will be able to help you understand what applies in your situation.

## **The order**

The order that the court makes will say who can live in the home and who is excluded from it. It can also impose obligations relating to the repair and maintenance of the home, or to payment of the rent or mortgage. The length of time for which the order will last depends on your particular circumstances and is usually 6 or 12 months, but may be renewable. Breach of an occupation order is not a criminal offence, but a power of arrest can be attached to the order, allowing the police to arrest the person in breach.

## **Undertakings**

When considering either a non-molestation order or an occupation order, it is possible to give undertakings, which are binding promises to the court, instead of having the court make an order. The difference is that breach of an undertaking is contempt of court, which can be punished by committal to prison, but it is not a criminal offence and no power of arrest can be attached.